

1 The Honorable Barbara J. Rothstein
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMEENJOHN STANIKZY,

Plaintiff,

v.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

NO. 2:20-cv-118

ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Plaintiffs, Ameenjohn Stanikzy, Niklas Steidl, and Jon Mackay on behalf of himself and the proposed Settlement Class, and Defendant, Progressive Direct Insurance Company (“PROGRESSIVE”) all acting by and through their respective counsel, have agreed, subject to final Court approval following sending of the Class Notice to the Settlement Class, to settle this Action upon the terms and conditions in the Settlement Agreement, filed with the Court on August 7, 2021; and

Plaintiffs have moved for certification of a settlement class, preliminary approval of the parties’ class settlement, and the provision of notice, as set forth in the Agreement and pursuant to FRCP 23(e); and

ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

1 The Court has read and considered the Settlement Agreement and the exhibits thereto and
2 has read and considered all other papers filed and prior proceedings had herein, and is otherwise
3 fully informed, and with good cause appearing,

4 IT IS HEREBY ORDERED AS FOLLOWS:

5 1. This Preliminary Approval Order incorporates by reference the definitions in the
6 Settlement Agreement.

7 2. The Court has jurisdiction over the subject matter of this Action and over all
8 Parties to this Action, including the Plaintiffs, all Settlement Class Members and Defendant.

9 3. The Court conditionally certifies the following Settlement Class, for settlement
10 purposes only, defined as follows:

11 All Progressive Direct insureds with Washington first party personal line policies
12 issued in Washington State, who received compensation for the total loss of their
13 own vehicles under their First Party (Comprehensive, Collision, and UIM)
14 coverages, and who received a total loss valuation derived from a Mitchell
15 International, Inc. WorkCenter Total Loss Report, based upon the value of
16 comparable vehicles which took a deduction for a “Projected Sold Adjustment.”

17 Excluded from the Class would be (a) the assigned Judge, the Judge's staff and
18 family, and Progressive employees, (b) claims for accidents with dates of loss
19 occurring before January 24, 2014 or valuation dates occurring after July 11, 2021
20 (the date at which Progressive ceased taking a “Projected Sold Adjustment” on
21 Washington claims), (c) claims on “non-owned” (borrowed or rented) vehicles;
22 (d) claims where the insured submitted written evidence supporting a different
23 valuation, and the amount of that different valuation submitted by the insured was
24 paid by Progressive or valuation paid was determined using the appraisal clause;
25 and (e) Opt Outs.

26 Having carefully reviewed the submissions, and without having to determine issues of
27 manageability in the context of settlement certification¹, and having carefully considered the
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29 ¹ *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556-57 (9th Cir. 2019)(*en banc*)

30 ORDER GRANTING PRELIMINARY APPROVAL
31 OF CLASS ACTION SETTLEMENT

1 single proposed Class which has no differing treatment of any Class Members, or inter-class
2 conflicts, and noting that substantial class certification discovery was completed, which is
3 presented in the parties respective briefing on Class Certification, and without resolving those
4 disputes, the Court finds that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied for
5 purposes of settlement certification.

6 4. For purposes of determining whether the terms of the Proposed Settlement should
7 be finally approved as fair, reasonable and adequate, and contingent upon the Settlement being
8 finally approved, Plaintiffs Ameenjohn Stanikzy, Niklas Steidl, and Jon Mackay, are appointed
9 as Class Representatives, and the following counsel are designated as counsel for the Class
10 ("Class Counsel"):

11 Stephen M. Hansen
12 Law Offices of Stephen M. Hansen, P.S.
13 1821 Dock Street, Suite 103
14 Tacoma, WA 98402

15 Scott P. Nealey
16 Law Office of Scott P. Nealey
17 315 Montgomery Street, 10th Floor,
18 San Francisco, CA 94104

19 5. If final approval of the Proposed Settlement is not obtained, or if Final Judgment
20 as contemplated herein is not granted, this Order shall be vacated *ab initio* and the Parties shall
21 be restored without prejudice to their respective litigation positions prior to the date of this Order
22 of Preliminary Approval.

23 6. Pending final determination of whether the Proposed Settlement should be
24 approved, all proceedings in the Action shall be stayed until further order of the Court, except
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ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

1 such proceedings as may be necessary either to implement the Proposed Settlement or to comply
2 with or effectuate the terms of the Stipulation of Settlement.

3 7. Within 60 days after the entry of this Order, the Claims Administrator shall send a
4 copy of the Individual Notice and a Claim Form (or Claim Forms if a Class Member has multiple
5 claims), pre-printed with the Class Member's name and most recent address, the date of the loss,
6 and the vehicle make, model, and year, by first-class mail, to each Person on the Updated
7 Settlement Class List. Prior to any mailing the Claims Administrator shall update all addresses
8 on the Class List by running the addresses thereon through the National Change of Address Data
9 Base. In furtherance of this Paragraph, the Court appoints KCC as the Claims Administrator for
10 this matter.

11 8. The Court preliminarily finds that the dissemination of the Individual Notice and
12 Claim Form under the terms and in the format provided for in this Order and the Settlement
13 Agreement (including supplemental e-mail notice to those with returned addresses, where e-mail
14 addresses are available and the establishment of a settlement notice website) constitutes the best
15 notice practicable under the circumstances and is due and sufficient notice for all purposes to all
16 persons entitled to such notice, and fully satisfies the requirements of due process, the Federal
17 Rules of Civil Procedures and all other applicable laws.

18 9. A hearing (the "Final Settlement Hearing") shall be held on March 30, 2022 at
19 9:00 o'clock a.m., PDT, by videoconference, as set forth in the Individual Notice, to determine
20 whether the Proposed Settlement of this Action (including the payment of attorneys' fees and
21 costs to Class Counsel, and a bonus to the Class Representatives) should be approved as fair,
22 reasonable, and adequate, and to determine whether final judgment approving the Proposed

23
24 ORDER GRANTING PRELIMINARY APPROVAL
25 OF CLASS ACTION SETTLEMENT

1 Settlement and dismissing all claims asserted in this Action on the merits, with prejudice and
2 without leave to amend, should be entered. The Settlement Hearing may be postponed,
3 adjourned or rescheduled by order of the Court without further notice to the Class Members.

4 10. Objections to the Settlement shall be heard, and any papers or briefs submitted in
5 support of said objections shall be considered, by the Court (unless the Court in its discretion
6 shall otherwise direct) only if they comply with the objection procedures set forth in the
7 Stipulation of Settlement and Notice. Specifically, members of the Class who have not
8 previously opted out of the Class must file a notice of intent to object to the Settlement. To be
9 effective, a notice of intent to object to the Settlement must: (1) contain a heading that includes
10 the name of the case and case number; (2) provide the name, address, telephone number and
11 signature of the Class Member filing the objection; (3) be filed with the Clerk of the Court not
12 later than fourteen (14) days before the Final Settlement Hearing; (4) be served on Class Counsel
13 and counsel for the Defendants at the addresses below by first-class mail, postmarked no later
14 than fourteen (14) days before the Final Settlement Hearing; (5) contain the name, address, bar
15 number and telephone number of the objecting Class Member's counsel, if represented by an
16 attorney. Class Members represented by an attorney must comply with all applicable laws and
17 rules for filing pleadings and documents in the Court; and State whether they intend to appear at
18 the Final Settlement Hearing, either in person or through counsel.

19 11. In addition to the foregoing, a notice of intent to object must contain the following
20 information, if the Class Member or his/her attorney requests permission to speak at the Final
21 Settlement Hearing: (1) a detailed statement of the specific legal and factual basis for each and
22 every objection; and (2) a detailed description of any and all evidence the Objector may offer at

23
24 ORDER GRANTING PRELIMINARY APPROVAL
25 OF CLASS ACTION SETTLEMENT

1 the Final Settlement Hearing, including photocopies of any and all exhibits which may be
2 introduced at the Final Settlement Hearing. Any individual or entity who objects, must submit
3 themselves or itself to discovery pursuant to the Stipulation of Settlement, under the timelines
4 specified therein.

5 12. Settlement Class Members who wish to exclude themselves from the Settlement
6 Class must prepare a written request for exclusion, postmarked no later than fourteen (14) days
7 before the Final Settlement Hearing date, which shall be sent to the Claims Administrator.
8 Written requests for exclusion must be signed and include the individual's name, address, and
9 telephone number, and expressly state the desire to be excluded from the Settlement Class.
10 Requests for exclusion must be exercised individually by the Class Member, not as or on behalf
11 of a group, class, or subclass, except that such exclusion requests may be submitted by a Class
12 Member's Legally Authorized Representative.

13 13. All Class Members who do not opt out of the Class shall be bound by any
14 Approval Order and Final Judgment entered pursuant to the Stipulation of Settlement, and shall
15 be barred and enjoined, now and in the future, from asserting any and all of the Released Claims,
16 as defined in the Stipulation of Settlement, against the Released Persons, as defined in the
17 Stipulation of Settlement, and any such Class Member shall be conclusively deemed to have
18 released any and all such Released Claims.

19 14. Class Counsel agree that any representation, encouragement, solicitation or other
20 assistance, including but not limited to referral to other counsel, of or to any Opt Outs or any
21 other person seeking to litigate with Defendants over any of the claims covered under the
22 Release in this matter could place Class Counsel in an untenable conflict of interest with the

23
24 ORDER GRANTING PRELIMINARY APPROVAL
25 OF CLASS ACTION SETTLEMENT

1 Class. Accordingly, Class Counsel and their respective firms agree (only to the extent that it is
2 otherwise not violative of any applicable rules governing the practice of law) not to represent,
3 encourage, solicit or otherwise assist, in any way whatsoever (including, but not limited to
4 referrals to other counsel) any Opt Out except that referring such person to the Notice or
5 suggesting to any such person the option of obtaining separate counsel, without specifically
6 identifying options for such counsel, shall be permitted under the terms of this provision.

7 Additionally, Class Counsel and their respective firms agree (only to the extent that it is
8 otherwise not violative of any applicable professional rules) not to represent, encourage, solicit
9 or otherwise assist, in any way whatsoever, any Opt Out or any other person who seeks to
10 represent any form of opt-out class, or any other person, in any subsequent litigation that person
11 may enter into with Released Persons regarding the Released Claims or any related claims,
12 except that suggesting to any such person the option of obtaining separate counsel, without
13 specifically identifying options for such counsel, shall be permitted.

14 15. The Settlement fits within the parameters necessary for potential final approval,
15 and is therefore hereby preliminarily approved, but is not to be deemed an admission of liability
16 or fault by Defendants or by any other person, or a finding of the validity of any claims asserted
17 in the Action or of any wrongdoing or of any violation of law by Defendants. The Settlement is
18 not a concession and shall not be used as an admission of any fault or omission by Defendants or
19 any other person or entity. Neither the terms or provisions of the Stipulation of Settlement, nor
20 any related document, nor any of the negotiations or proceedings connected with it, shall be
21 offered as evidence or received in evidence in any pending or future civil, criminal, or
22 administrative action nor proceeding, to establish any liability or admission by Defendants

23
24 ORDER GRANTING PRELIMINARY APPROVAL
25 OF CLASS ACTION SETTLEMENT

1 except in any proceedings brought to enforce the Stipulation of Settlement, except that the
2 Released Persons may file this Order in any action that may be brought against any of them in
3 order to support a defense or counterclaim based on principles of res judicata, collateral estoppel,
4 release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion
5 or issue preclusion, or similar defense or counterclaim.

6 16. Upon motion of any party, the Court may, for good cause, extend any of the
7 deadlines set forth in this Order without further notice to the Class.

8 17. Pending final determination as to whether the Proposed Settlement should be
9 approved, no Class Member shall commence, prosecute, pursue, or litigate any Released Claims
10 against any Released Person, whether directly, representatively, or in any capacity, and
11 regardless of whether any such Class Member has appeared in the Action.

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13 DATED this 11th day of November, 2021.
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17 Barbara Jacobs Rothstein
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Barbara Jacobs Rothstein
U.S. District Court Judge

ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT